SERVED: December 22, 2005

NTSB Order No. EA-5197

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 19th day of December, 2005

MARION C. BLAKEY, Administrator, Federal Aviation Administration, Complainant, v. HAROLD A. COUGHLAN, Respondent.	Docket SE-17000

OPINION AND ORDER

Respondent has appealed from the June 23, 2004, oral initial decision and order of Administrative Law Judge William E. Fowler, Jr.,[1] which affirmed the Administrator's order revoking respondent's airline transport pilot certificate based on his alleged falsification of an application for BE-200 (Beech King Air) and CE-500 (Cessna Citation) type ratings and of documents presented in support of that application, in violation of 14

[1] A copy of the initial decision, an excerpt from the hearing transcript, is attached.

C.F.R. § 61.59(a)(1) and (a)(2).[2] As further discussed below, we deny respondent's appeal and affirm the order of revocation.

Background

On May 27, 1998, respondent applied for and was issued BE-200 and CE-500 type ratings on the basis of military competency obtained in the U.S. Army. He certified on the application that he had flown at least 10 hours as pilot-in-command during the past 12 months in an RC-12D[3] (the military equivalent of the BE-200), and a T-47 (the military equivalent of the CE-500). Although the serial number of the aircraft is not a required item of information on the application form, respondent chose to specify the serial number of the RC-12D he claimed to have flown. It should be noted that at the time he submitted this application, respondent was employed as an FAA inspector whose duties included, among other things, issuing type ratings to applicants based on military competency.

Some time later, during a routine time and attendance audit,

---

[2] **§ 61.59 Falsification, reproduction, or alteration of applications, certificates, logbooks, reports, or records.**

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false statement on any application for a certificate, rating, authorization, or duplicate thereof, issued under this part;

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part;

[3] In addition, respondent certified on his application that

questions were raised about respondent's truthfulness when military orders he had submitted to the FAA purporting to call respondent to active duty in June 1999 were found to be false. Respondent, who had not taken leave from the FAA during the time that he was absent from his FAA post while claiming to be on military duty, subsequently pled guilty to a criminal charge related to his acceptance of pay from the FAA during this time period.

Following the discovery of the June 1999 false military orders, respondent's complete airman records, including his May 27, 1998, application for the BE-200 and CE-500 type ratings were reviewed. In February 2001, the FAA issued a letter of re-examination asking respondent to produce the records he relied on to obtain the BE-200 and CE-500 ratings based on military competence. In March 2001, respondent presented several documents that he claimed established his military competence in those aircraft, including: (1) a U.S. Army form purportedly documenting flights in the military aircraft listed on his application, bearing stamps and a signature indicating it was prepared by Chilean military officials (Exhibit R-2); and (2) a U.S. Army form purportedly showing that he earned 112 Army Reserve points towards retirement for flights in March and April 1998 (Exhibit G-3).[4]

(continued)
he had flown 10 hours in the previous 12 months in a C-12F.

[4] The Administrator's complaint alleged that respondent also submitted an FAA time and attendance form indicating he was on duty as an FAA inspector and did not take leave during the time

The evidence at the hearing before the law judge established that respondent retired from the U.S. Army Reserve effective March 1, 1996, and was not in an active military status when he obtained the alleged military competence upon which his March 1998 application for the BE-200 and CE-500 was based. Respondent conceded he had not been called back to the U.S. Army since his retirement and that he was not on duty with the U.S. Army in March of 1998. (Transcript (Tr.) 317.) There was no indication in his Army records that he was engaged in any military flying (classified or non-classified) during the time period he claimed on his application to have flown in a military status. Testimony at the hearing established that while retirees do sometimes participate in training (referred to as "inactive duty training"), they cannot participate in such training without authorizing military orders. Respondent testified that he obtained the claimed military competence in March 1998 by flying with the Chilean Air Force, and referred to this as "inactive duty training." (Tr. 268, 356.) He stated that a Chilean Air Force operations officer certified his flying time. However, he admitted he had no orders from the U.S. Army authorizing this training in Chile.

(continued)
period in March 1998 he claimed to have flown the military aircraft. It is unclear to us why respondent would submit such a document in response to the re-examination request. Nonetheless, the document, which was signed by respondent, was clearly false in that respondent admitted he was out of the country (in Chile) during the relevant time period and not on duty as an FAA inspector.

With regard to the specific aircraft listed on respondent's application, un-rebutted testimony and documentary evidence established that the U.S. Army had only one T-47, and respondent was not one of the pilots who had flown it. Further, the evidence also established that respondent could not have flown an RC-12D with the U.S. Army as he indicated on his application, because there were only four in the U.S. Army at the time he claimed to have flown it (one was located in New Jersey and three in Arizona). The RC-12D with the serial number respondent listed on his application was located in Arizona, and the evidence unequivocally demonstrated that respondent had never flown that aircraft. Respondent claimed an incorrect serial number was provided to him by Chilean officials, but offered no explanation for the error.[5]

In response to the FAA's March 2001 letter of re-examination, respondent submitted a U.S. Army form purporting to document respondent's flights, titled *Individual Flight Record & Flight Certificate*, which was apparently signed by Chilean military officials. (Exhibit R-2.) However, the authenticity of this form was called into question by testimony from multiple witnesses who observed that the form was an obsolete version (the Army had transitioned to an electronic format several years

[5] It is, however, interesting to note that the RC-12D serial number respondent entered on his application was among those listed in an internal guidance document used by FAA inspectors to determine which Army aircraft were eligible for issuance of BE-200 type ratings based on military competency. Respondent acknowledged that he was familiar with this guidance document. (Exhibit G-11, Tr. 337.)

earlier), and bore conflicting and unnecessary stamps indicating the information on the form was both "confidential" and "secret." It was also stamped "NO FORN," which meant the form should not be viewed by foreigners despite the fact that it had seemingly been prepared by foreigners. Respondent also submitted in support of his asserted military competence a U.S. Army form titled *Record of Individual Performance of Reserve Duty Training*, dated April 5, 1998 (Exhibit G-3), purportedly documenting certain flights in March and April 1998 and indicating they were for "points only." This form, also apparently signed by a Chilean official, was not included in respondent's official Army records.[6] The Administrator's witnesses testified that this form was suspect for several reasons, including the fact that points are earned towards retirement but respondent was already retired at the time he allegedly earned the points.[7]

The law judge affirmed the alleged violations and the order of revocation, finding that respondent had entered false information on his application for the BE-200 and CE-500 type ratings, and that respondent had produced falsified military records in an attempt to corroborate that false information. He also noted that the record showed respondent had engaged in a "pattern" of false statements.

---

[6] Respondent stated that he personally sent both this form and the *Individual Flight Record & Flight Certificate* form discussed above to the Army records center in St. Louis but he never received an acknowledgement. (Tr. 283.)

[7] A U.S Army official testified that retired reservists such as respondent are not eligible to earn "points."

Discussion

On appeal, respondent argues that (1) the record does not support the law judge's finding that respondent made intentionally false statements on his application; (2) the FAA's revocation of his airman certificate based on alleged lack of qualifications is arbitrary, capricious, and an abuse of discretion because after respondent voluntarily surrendered the BE-200 and CE-500 ratings he was issued as a result of his May 27, 1998, application, the FAA found him qualified for a CE-500 rating (on grounds other than military competency) and re-issued him that rating; and (3) this revocation proceeding is time-barred by the 5-year statute of limitations in 28 U.S.C. § 2462. The Administrator has filed a reply brief. We find none of respondent's arguments persuasive.

Intentional Falsification

Regarding the finding of intentional falsification, respondent takes issue with the law judge's statement that respondent "admitted during the course of his testimony that the military competence that he had set forth in [his application] … was not 10 hours in each of these aircraft … within the previous 12 months of the application, which means that this statement is false." (Tr. 528.) Respondent claims that the record supports that he flew 10 hours as pilot-in-command of the aircraft he listed in the previous 12 months, as he certified on the application.

Respondent did not explicitly admit in his testimony at the hearing that the flight time listed on the application did not take place during the 12 months prior to the application. However, FAA Inspector James Fitzgerald testified at the hearing that he was present at an interview during which respondent admitted to an investigator from the Department of Transportation Inspector General's Office that the military flying time at issue took place more than 12 months before the date of the application. (Tr. 93-4.) The law judge may have had this testimony in mind when he made the comment referring to respondent's admission. We note that respondent did not attempt to impeach Inspector Fitzgerald's testimony on this point. More importantly, even if we disregard the law judge's comment, we conclude based on our own review of the record that there is ample evidence to support the Administrator's charges of falsification.

Respondent admitted that he retired from the U.S. Army Reserve in 1996 and had not been called back to duty by any branch of the military since that time. Numerous witnesses from both the FAA and the U.S. Army, including some of respondent's witnesses, testified at the hearing that a retired pilot such as respondent would not be eligible to receive type ratings based on military competency allegedly received after his retirement. The record unequivocally establishes that the piloting time respondent claimed to have obtained in the U.S. Army was not in fact obtained under the auspices of the U.S. Army or any other

branch of the U.S. military, as required by the FAA.[8]

As described above, numerous witnesses testified that the documents respondent proffered in support of this flight time were also highly suspect. The March 1998 Chilean flights and flight hours recorded on those documents (which respondent claimed as military competency obtained in the U.S. Army) were not reflected in his official U.S. Army records.[9] Further, he conceded that the serial number he provided for the RC-12D was false although he asserted that the error was not material. While the serial number, standing alone, may not have been a material fact, we think it corroborates respondent's overall mis-representation of facts in connection with his application. Accordingly, we find that a preponderance of the reliable, probative, and substantial evidence establishes that respondent

[8] 14 C.F.R. § 61.73(h), which describes the types of documents that constitute satisfactory evidence of military piloting status and experience in connection with applications for pilot certificates and pilot ratings based on military competency. That regulation states that, "[a] certified U.S. Armed Force logbook or an appropriate official U.S. Armed Force form or summary may be used to demonstrate flight time in military aircraft as a member of a U.S. Armed Force." 14 C.F.R. § 61.73(h)(4). It further provides that pilot-in-command status can be demonstrated by, "[a]n official U.S. Armed Force record of a military checkout as pilot in command." 14 C.F.R. § 61.73(h)(5).

[9] Respondent's assertion that former Army records custodian John Turner testified, "this flying time would have been credited by the U.S. Army" (Respondent's Brief at p. 19 note 6), is misleading. Mr. Turner merely indicated that if he had received the forms purportedly documenting respondent's Chilean flight time he would have credited the time to respondent; however, there is no indication that he or anyone else ever received these forms. Indeed, other Army witnesses indicated if they had received the forms they would not have credited the time without further investigation.

intentionally falsified his application and supporting documents, as alleged in the compliant.

Estoppel

We turn now to respondent's argument that this revocation action is improper because the FAA found him qualified for a BE-200 type rating after learning of the facts that gave rise to the allegation of disqualification in this case. This argument is essentially one of equitable estoppel,[10] which we have held does not apply in a revocation proceeding. Administrator v. Fisher, 6 NTSB 1292 (1989), affd. Fisher v. DOT, 917 F.2d 27 (9th Cir. 1990) (estoppel does not apply where the public interest and safety in air commerce are at stake, and where the Administrator's powers are so clearly granted by statute).

Furthermore, the FAA's inclusion of a BE-200 type rating on respondent's airman certificate based on his demonstration of technical qualification to hold such a rating is not necessarily inconsistent with the agency's position in this proceeding that respondent lacks qualifications to hold his underlying airman certificate based on his intentional falsification. See Administrator v. Brzoska, NTSB Order No. EA-4288 (1994) (holding the Administrator was not estopped from pursuing a revocation action because respondent was issued additional type ratings

[10] Equitable estoppel is a legal doctrine that prevents a person from adopting a new position that contradicts a previous position when allowing the new position would unfairly harm another person who has relied on the previous position to his or her detriment. *Merrim-Webster's Dictionary of Law* (1996).

after FAA learned of respondent's offense, since the Administrator's allegation that respondent lacked the care, judgment, and responsibility required of a certificate holder is unrelated to his technical qualification).

"Qualification to hold an airman certificate involves far more than just having the technical competence to operate an aircraft; it involves, in addition, possessing the care, judgment and responsibility to comply with rules and regulations designed to ensure safe operation and safety in air commerce. Few violations more directly call into question a pilot's non-technical qualifications than do those involving falsifications, and few falsifications more clearly implicate and threaten air safety than do those involving an airman's entitlement to advanced certificates or additional ratings." Administrator v. Monaco, 6 NTSB 705, 707 (1988) (upholding revocation when respondent falsified application for type rating based on military competence).

Statute of Limitations

Finally, respondent asserts that this proceeding is barred by the general statute of limitations in 28 U.S.C. § 2462 because it was commenced more than 5 years after the claim accrued.[11] As

[11] Section 2462 provides, in part:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued …

the Administrator points out, this is an affirmative defense that respondent did not raise until the conclusion of the 2-day hearing in this case. Our rules required respondent to identify in his answer to the complaint any affirmative defenses he intended to raise at the hearing. 49 C.F.R. § 821.31(b). Accordingly, respondent waived this defense when he did not include it in his answer.

However, even if the defense were not waived, we have previously held that the statute of limitations in section 2462 is inapplicable to revocation proceedings because they do not involve the enforcement of a "civil fine, penalty, or forfeiture." Administrator v. Brzoska, supra. It is well-established that revocation of a pilot certificate addresses a lack of qualification and is, therefore, a remedial, not a punitive action. Id.; see also Hite v. NTSB, 991 F.2d 17, 20 (1993).

Further, even assuming the 5-year statute of limitations in 28 U.S.C. 2462 did apply to our proceedings, we are not convinced that the 5-year time limit was exceeded in this case. Although the offense took place in May 1998, the claim may not have accrued until after the time and attendance audit that raised questions about respondent's truthfulness, leading to the February 2001 letter of re-examination. The record is silent as to when the time and attendance audit took place, but it obviously had to be after June 1999 as that was the date of the fraudulent military orders and respondent's unexcused absence, both of which were identified in (and therefore preceded) the

audit. Thus, if the time period is calculated from the time the offense was first discovered, the FAA issued the October 28, 2003, order of revocation well within the 5-year period specified in § 2462.[12]

For all of the reasons discussed above, we find that section 2462 does not bar this proceeding.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied and the law judge's initial decision affirming the revocation of respondent's airman certificate is affirmed;[13] and

2. Respondent's motion for oral argument is denied.[14]

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS and HERSMAN, Members of the Board, concurred in the above opinion and order.

[12] In addition, we note that the order of revocation was preceded by a notice of proposed certificate action containing identical charges, which was issued to respondent on October 24, 2001, thereby putting him on notice of the charges some 2 years prior to the order of revocation.

[13] The revocation of respondent's airline transport pilot certificate shall begin 30 days after the service date indicated on this opinion and order. For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

[14] The issues have been fully briefed by the parties and oral argument is not necessary. See 49 C.F.R. § 821.48.